

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0235]

[Docket No. 2015-0001; Sequence 13]

**General Services Administration Acquisition Regulation;
Information Collection; Federal Supply Schedule Pricing
Disclosures**

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division is submitting a request to the Office of Management and Budget (OMB) to review and approve an extension of a previously approved information collection requirement regarding General Services Administration Acquisition Regulation clause 552.238-75, Price Reductions, otherwise known as the Price Reductions clause. The requested extension has been renamed "Federal Supply Schedule Pricing Disclosures" because it now includes a burden estimate for Commercial Sales Practices disclosures. The information collected is used to establish and maintain Federal Supply Schedule pricing and price related terms and conditions.

DATES: Submit comments on or before: **[Insert date 60 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments identified by **Information Collection 3090-0235, Federal Supply Schedule Pricing**

Disclosures, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0235, Federal Supply Schedule Pricing Disclosures." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0235, Federal Supply Schedule Pricing Disclosures" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405. ATTN: Ms. Flowers/IC 3090-0235, Federal Supply Schedule Pricing Disclosures.

Instructions: Please submit comments only and cite Information Collection 3090-0235, Federal Supply Schedule Pricing Disclosures, in all correspondence related to this

collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Matthew McFarland, General Services Acquisition Policy Division, 202-690-9232 or gsar@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA's Federal Supply Schedule (FSS) program, commonly known as the GSA Schedules program or Multiple Award Schedule (MAS) program, provides federal agencies with a simplified process for acquiring commercial supplies and services. The FSS program is the Government's preeminent contracting vehicle, accounting for approximately 10 percent of all federal contract dollars, with approximately \$33 billion in purchases made through the program in fiscal year 2014.

GSA is requesting an extension of a previously approved information collection requirement related to one

of the major components of the FSS program, General Services Administration Acquisition Regulation (GSAR) clause 552.238-75, Price Reductions, otherwise known as the Price Reductions clause. However, this requested extension has been renamed "Federal Supply Schedule Pricing Disclosures" because it now includes a burden estimate for Commercial Sales Practices disclosures.

FSS Pricing Practices

GSA establishes price reasonableness on its FSS contracts by comparing a contractor's prices and price-related terms and conditions with those offered to their other customers. Through analysis and negotiations, GSA establishes a favorable pricing relationship in comparison to one of the contractor's customers (or category of customers) and then maintains that pricing relationship for the life of the contract. In order to carry out this practice, GSA collects pricing information through Commercial Sales Practices (CSP) disclosures and enforces the pricing relationship through General Services Administration Acquisition Regulation (GSAR) clause 552.238-75, Price Reductions, commonly known as the Price Reductions clause (PRC).

Commercial Sales Practices (CSP): In accordance with GSAR 515.408(a)(2), offerors must submit information in the Commercial Sales Practices Format provided in the solicitation, following the instructions at GSAR Figure 515.4-2, or submit information in their own format. In addition to when an offer is submitted, CSP disclosures are also required prior to executing bilateral modifications for exercising a contract option period, adding items to the contract, or increasing pricing under the Economic Price Adjustment clause (GSAR 552.216-70).

Price Reductions Clause (PRC): GSAR 538.273 (b)(2) prescribes the PRC for use in all FSS solicitations and contracts. The clause is intended to ensure the Government maintains its price/discount (and/or term and condition) advantage in relation to the contractor's customer (or category of customer) upon which the FSS contract is based. The basis of award customer (or category of customer) is identified at the conclusion of negotiations and noted in the contract. Thereafter, the PRC requires FSS contractors to inform the contracting officer of price reductions within 15 calendar days. Per GSAR 552.238-75(c)(1),

A price reduction shall apply to purchases under this contract if, after the date

negotiations conclude, the Contractor—

- (i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

- (ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

- (iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

41 U.S.C. 152(3)(B) requires FSS ordering procedures to “result in the lowest overall cost alternative to meet the needs of the Federal Government.” CSP disclosures and the PRC ensure GSA meets this objective by giving it insight into a contractor’s pricing practices, which is proprietary information that can only be obtained directly from the contractor.

Information Collection Changes and Updates

GSA has revised this information collection by adding CSP disclosure burden estimates, renaming the information collection, and updating figures.

Including the CSP Disclosure Burden: GSA is adding CSP disclosure burden estimates to this information collection because of comments received for its Transactional Data

Reporting proposed rule (GSAR case 2013-G504), published in the Federal Register at 80 FR 11619, on March 4, 2015. GSA proposed to amend the GSAR to include a clause that would require FSS vendors to report transactional data from orders and prices paid by ordering activities. The new clause would be paired with changes to the basis of award monitoring, or "tracking customer," requirement of the existing Price Reductions clause, resulting in a burden reduction for participating FSS contractors. The proposed rule also noted, "...GSA would maintain the right throughout the life of the FSS contract to ask a vendor for updates to the disclosures made on its [CSP] format... if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions."

In comments received regarding the proposed rule, industry respondents indicated retaining CSP disclosures would cancel out any burden reduction achieved by eliminating the PRC tracking customer requirement. Specifically, respondents were concerned that CSP disclosures still force them to monitor their commercial prices, which ultimately causes the associated burden for both disclosure requirements. In response, GSA agrees the

burden of the PRC and CSP is related and is therefore including CSP disclosure burden estimates in this information collection extension request.

Renaming the Information Collection: GSA is changing the information collection name from "Price Reductions Clause" to "Federal Supply Schedule Pricing Disclosures" to more accurately reflect the scope of the information collected.

Updated Figures: The following figures were updated for the current information collection:

- Increased the number of FSS contracts and vendors from 19,000 FSS contracts held by 16,000 vendors to 20,094 FSS contracts were held by 17,302 vendors.
- Increased the number of price reduction modifications from 1,560 to 2,148.
- Decreased the number of GSA OIG pre-award audits from an average of 70 to 59.
- Increased the estimated annual time burden from 868,920 hours to 1,324,343 hours.
- Increased the estimated annual cost burden; the new estimated annual cost burden is \$90,055,353. The 2012 information collection did not provide a cost burden

estimate, but if the same hourly rate (\$68) was applied to the 2012 time burden, the 2012 cost burden would have been \$59,086,560.

B. Annual Reporting Burden

This information collection applies to all companies that held, or submitted offers for, FSS contracts. In fiscal year 2014:

- 20,094 contracts were active, including 1,411 contracts that were awarded and 2,213 contracts that ended over that time period.
- 17,302 companies held FSS contracts (some companies held more than one contract).
- 3,464 offers were submitted for FSS contracts.

However, the number of responses consists of the number of CSP disclosures and price reduction notifications made in FY2014, as well as the average number of GSA Office of Inspector General audits performed between fiscal years 2012 and 2014.

Heavier Lifts and Lighter Lifts

FSS contracts are held by a diverse set of companies, which vary in terms of business size, offerings, and FSS sales volume. For example, in fiscal year 2014:

- 32.8 percent, or 5,673 companies, reported \$0 in FSS contracts.
- 5.6 percent, or 975 companies, accounted for 80 percent of all FSS sales.
- The top 20 percent of FSS contractors (in terms of FY2014 sales) accounted for 95.7 percent of FSS sales.
- Only 2.6 percent of FSS contractors reported more than \$1 million in FSS sales.

In general, a contractor's FSS sales volume will have the greatest effect on the associated burden of these requirements, although the number and type of offerings, and business structure, can also be significant factors. As shown by the above figures, a relatively small number of FSS contractors account for the vast majority of FSS sales and accordingly, likely bear a heavier burden for these requirements. Conversely, the majority of FSS vendors, which are typically small businesses with lower sales volume, absorb a lighter burden for these requirements.

To account for the differences among FSS contractors, GSA is utilizing the Pareto principle, or "80/20 rule," which states 80 percent of effects comes from 20 percent of

the population. Accordingly, GSA is separating FSS contractors among those that have a "heavier lift" (20 percent) from those that have a "lighter lift" (80 percent). Contractors with heavier lifts are those with the characteristics that lead to increased burden - more sales volume, higher number of contract items, more complex offerings, more transactions, more complex transactions, and/or intricate business structures. This methodology is used for several components of the burden analysis.

Cost Burden Calculation

The estimated cost burden for respondents was calculated by multiplying the burden hours by an estimated cost of \$68/hour (\$50/hour with a 36 percent overhead rate).

Price Reductions Clause

For this information collection clearance, GSA attributes the PRC-related burden to training, compliance systems, and audits, as well as a burden associated with notifying GSA of price reductions within 15 calendar days after their occurrence.

Training: FSS contractors provide training to their employees to ensure compliance with FSS pricing disclosure

requirements. In FY2014, there were 17,302 contractors, 3,460 (20 percent) with a heavier lift and 13,842 (80 percent) with a lighter lift. Contractors within the heavier lift category may need to develop formal training programs and conduct training for numerous divisions and offices, while contractors in the lighter lift category may have no need for training design and administration due to having as few as one person responsible for PRC compliance.

Training - Heavier Lift

Total Annual Responses: 3,460
Average Hours per Response: 40
Total Time Burden (Hours): 138,400
Total Cost Burden: \$9,411,200

Training - Lighter Lift

Total Annual Responses: 13,842
Average Hours per Response: 20
Total Time Burden (Hours): 276,840
Total Cost Burden: \$18,825,120

Compliance Systems: FSS contractors must develop systems to control discount relationships with other customers/categories of customer to ensure the basis of award pricing relationship is not disturbed. In response to the 2012 information collection request, the Coalition for Government Procurement provided the results from a survey it conducted among its members regarding the PRC burden. The Coalition survey results attributed 1,100 burden hours

to developing compliance systems. However, GSA believes this figure is only attributable to heavier lift contractors and should be allocated over the 20-year life of an FSS contract because a significant part of a burden is the effort to establish a compliance system that will be used over the life of the contract. GSA is attributing a total of 600 burden hours to compliance systems for contractors with a lighter lift and is also allocating that burden over a 20-year period. The results are an annual 55-hour burden for heavier lift contractors (1,100 hours divided by 20 years) and an annual 30-hour burden for lighter lift contractors (600 hours divided by 20 years).

In FY2014, there were 17,302 contractors, 3,460 (20 percent) with a heavier lift and 13,842 (80 percent) with a lighter lift:

<u>Compliance Systems - Heavier Lift</u>
Total Annual Responses: <u>3,460</u>
Average Hours per Response: <u>55</u>
Total Time Burden (Hours): <u>190,322</u>
Total Cost Burden: <u>\$12,940,400</u>

<u>Compliance Systems - Lighter Lift</u>
Total Annual Responses: <u>13,842</u>
Average Hours per Response: <u>30</u>
Total Time Burden (Hours): <u>415,248</u>
Total Cost Burden: <u>\$28,237,680</u>

Audits: The GSA Office of Inspector General (OIG) performed an average of 59 pre-award audits of FSS contracts between FY2012 and FY2014, according to the OIG's Semiannual Congressional Reports over that time period. Respondents to a 2012 Coalition for Government Procurement survey estimated that approximately 440-470 hours were spent preparing for audits involving the PRC; the 455 hour figure is the median point in the range:

GSA OIG Audits

Total Annual Responses: 59
Average Hours per Response: 455
Total Time Burden (Hours): 26,845
Total Cost Burden: \$1,825,460

Price Reduction Notifications: 2,148 price reduction modifications were completed in FY14, with each modification requiring a notification from the contractor. In a survey conducted among GSA FSS contracting officers, respondents estimated it took an average of 4.25 hours to complete a price reduction modification. GSA believes FSS contractors bear a similar burden for this task and is therefore using the same burden estimate.

Price Reduction Notifications

Total Annual Responses: 2,148
Average Hours per Response: 4.25
Total Time Burden (Hours): 9,129
Total Cost Burden: \$620,772

Commercial Sales Practices Disclosures

The CSP burden results from disclosures required of any contractor submitting an offer for an FSS contract or modifying an FSS contract to increase prices, add items and Special Item Numbers, or exercise options. GSA attributed a negotiations burden to the PRC in the previous information collection, but is now including that burden within the CSP disclosure estimates.

The burden estimates for CSP disclosures are based upon the estimates provided by respondents to the GSA FSS contracting officer survey. While the 77 survey respondents provided estimates regarding the amount of time it takes FSS contracting officers to complete CSP-related tasks, GSA believes FSS contractors bear a similar burden for these tasks and is therefore using the same burden estimates.

Pre-award Disclosures: In FY2014, contractors submitted 3,464 offers for FSS contracts, with 693 (20 percent) offerors having a heavier lift (20 percent) and 2,771 (80 percent) with a lighter lift:

<u>Pre-award Disclosures - Heavier Lift</u>	
Total Annual Responses:	<u>693</u>
Average Hours per Response:	<u>41.48</u>
Total Time Burden (Hours):	<u>28,746</u>
Total Cost Burden:	<u>\$1,954,704</u>

Pre-award Disclosures - Lighter Lift

Total Annual Responses: 2,771
Average Hours per Response: 32.41
Total Time Burden (Hours): 89,808
Total Cost Burden: \$6,106,951

Price Increase Modifications: In FY2014, 2,509 price increase modifications were processed, including 502 (20 percent) with a heavier lift and 2,007 (80 percent) with a lighter lift:

Price Increases - Heavier Lift

Total Annual Responses: 502
Average Hours per Response: 10.45
Total Time Burden (Hours): 5,246
Total Cost Burden: \$356,721

Price Increases - Lighter Lift

Total Annual Responses: 2,007
Average Hours per Response: 9.71
Total Time Burden (Hours): 18,404
Total Cost Burden: \$1,251,485

Adding Items and Special Item Numbers (SINs): In FY2014, 6,861 modifications to add contract items or SINs were processed, including 1,372 (20 percent) with a heavier lift and 5,489 (80 percent) with a lighter lift:

Addition Modifications - Heavier Lift

Total Annual Responses: 1,372
Average Hours per Response: 11.13
Total Time Burden (Hours): 15,270
Total Cost Burden: \$1,038,384

Addition Modifications - Lighter Lift

Total Annual Responses: 5,489
Average Hours per Response: 10.65
Total Time Burden (Hours): 58,458

Total Cost Burden: \$3,975,134

Exercising Options: In FY2014, 2,237 modifications to exercise options were processed, including 447 (20 percent) with a heavier lift and 1,790 (80 percent) with a lighter lift:

Option Modifications - Heavier Lift

Total Annual Responses: 447

Average Hours per Response: 26.14

Total Time Burden (Hours): 11,685

Total Cost Burden: \$794,551

Option Modifications - Lighter Lift

Total Annual Responses: 1,790

Average Hours per Response: 22.32

Total Time Burden (Hours): 39,953

Total Cost Burden: \$2,716,790

Total Annual Burden

The total estimated burden imposed by Federal Supply Schedule pricing disclosures is as follows:

Estimated Annual Time Burden (Hours)

Price Reductions Clause: 1,056,774

CSP Disclosures: 267,569

Total Annual Time Burden: 1,324,343

Estimated Annual Cost Burden

Price Reductions Clause: \$71,860,632

CSP Disclosures: \$18,194,721

Total Annual Cost Burden: \$90,055,353

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will

have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 3090-0235, Price Reductions Clause, in all correspondence.

DATED: November 12, 2015.

Jeffrey A. Koses,
Director, Office of Acquisition Policy,
Office of Government-wide Policy.

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